

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

ELAINE L. CHAO, SECRETARY)	
OF LABOR, UNITED STATES)	
DEPARTMENT OF LABOR,)	
)	Civil Action No. 07-923
Plaintiff,)	
)	Judge Standish
v.)	Magistrate Judge Caiazza
)	
INDUSTRIAL APPRAISAL COMPANY,)	
)	
Defendant.)	

ORDER

The Defendant's Motion to Compel Discovery (Doc. 22) will be denied.

Despite being plainly aware of the government's assertions of privilege, see *id.* at ¶ 8, the Defendant cites no relevant law in support of its arguments. Many of them go against the strong weight of legal authority, or at least the spirit and intent thereof. Compare, e.g., Def.'s Mot. at ¶ 10 ("it is unclear how the statements of former employees can be [informer-]privileged") with Pl.'s Resp. (Doc. 23) at 5-6 (collecting numerous cases holding contrary); Def.'s Mot. at ¶ 12 (complaining of trial by ambush) with Mitchell v. Roma, 265 F.2d 633, 636 (3d Cir. 1959) (upholding government's refusal to produce information regarding confidential informers during discovery and stating that, although "trial is not a game of blindman's buff, . . . we cannot overlook the fact that the modern discovery rules do not abolish . . . withholding information based on a claim of privilege").


On the other hand, Plaintiff's counsel has stated careful, reasoned bases for the assertions of privilege, and the DOL has cited law and submitted an affidavit in support of the same. See Doc. 23 and attachment thereto.

In the end, the court "must balance the public interest in protecting the flow of information against the [defendant]'s right to prepare [its] defense." Roma, 265 F.2d at 636 (citation omitted). Plaintiff's counsel has proposed an approach for balancing those interests, see Doc. 23 at 7-8, and the Defendant has failed to show the government's current withholding of privileged information is inconsistent with the law.

For these reasons, as well as the others articulated in the Plaintiff's thoughtful and persuasive brief, the Defendant's Motion to Compel (**Doc. 22**) is **DENIED**.

SO ORDERED.

May 1, 2008


Francis X. Caienza
U.S. Magistrate Judge

cc (via email):

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